

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

|                            |   |                                   |
|----------------------------|---|-----------------------------------|
| DEBRA ROJAS                | * | Civil Action No. 1:19-CV-0775-JRN |
| V.                         | * |                                   |
| TOLTECA ENTERPRISES INC. & | * |                                   |
| TRAVELERS CASUALTY AND     | * |                                   |
| SURETY CO. OF AMERICA      | * |                                   |

**MOTION FOR LEAVE TO FILE COUNTERCLAIM**

Now comes Tolteca Enterprises Inc., dba The Phoenix Recovery Group who asks for leave to file a counterclaim against the Plaintiff. A copy of the proposed counterclaim is filed herewith.

Leave should be freely given when justice requires. Rule 15, FRCP.

The counterclaim has become necessary against Plaintiff to redress the considerable expense she is causing Defendant Tolteca to defend itself against Plaintiff's claims. The claims set out in Plaintiff's pleadings are defensible. The claims are frivolous, vexatious and time consuming. The claims are time barred in some instances, and in others are defensible and Plaintiff has asserted claims that fail to state a claim on which relief may be granted, or for which the court lacks federal jurisdiction.

The FDCPA and TDCA both provide for defense costs and attorney fees to be recovered for bad faith and harassing lawsuits. The counterclaim will require Plaintiff to have some "skin in the game" as she will be risking having to pay defense costs and attorney fees her litigation is causing.

For the foregoing reasons, the court should grant leave for the counterclaim to be filed.

S/Tom Clarke  
Texas Bar No. 04318600  
8026 Vantage Dr. #105  
San Antonio, Texas 78230  
210/340-8448  
210/348-7946 Fax  
tclarkeatty7@aol.com  
Attorney for Defendants

**CERTIFICATE OF SERVICE**

The foregoing motion has been e-filed on March 16, 2020, with the court's CM/ECF electronic filing system which will give electronic notice to Tyler Hickle, attorney for the Plaintiff.

S/Tom Clarke

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**ORDER GRANTING LEAVE TO FILE THE COUNTERCLAIM**

The court finds that Defendant Tolteca Enterprises Inc.'s motion for leave to file a counterclaim against Plaintiff should be granted.

IT IS ORDERED that the counterclaim shall be filed in the papers of this cause.

Signed on \_\_\_\_\_, 2020.

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U.S. DISTRICT COURT  
JUDGE PRESIDING